



January 16, 2015

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Expanding Federal Support for Predevelopment Activities for Nonfederal Domestic Infrastructure Assets

The United States is significantly underinvesting in both the maintenance of existing public infrastructure and the development of new infrastructure projects. While there is no replacement for adequate public funding, innovative financing options and increased collaboration between the private and public sectors can help to increase overall investment in infrastructure.

However, a major challenge for innovative infrastructure projects, whether using emerging technologies or alternative financing, is the lack of funding for the phases of infrastructure project development that precede actual construction. Infrastructure projects require upfront costs, commonly known as "predevelopment" costs, for activities such as project and system planning, economic impact analyses, preliminary engineering assessments, and environmental review. Although only accounting for a small percentage of total costs, predevelopment activities have considerable influence on which projects will move forward, where and how they will be built, who will fund them, and who will benefit from them. Yet, in light of factors like fiscal constraints, the extent of overall needs, and risk aversion, State, local, and tribal governments tend to focus scarce resources on constructing and developing conventional projects and addressing their most critical infrastructure needs, thereby underinvesting in predevelopment.

Greater attention to the predevelopment phase could yield a range of benefits -- for example, providing the opportunity to develop longer-term, more innovative, and more complex

infrastructure projects and facilitating assessment of a range of financing approaches, including public-private partnerships. Additional investment in predevelopment costs also may enable State, local, and tribal governments to utilize innovations in infrastructure design and emerging technologies, reduce long-term costs to infrastructure project users, and provide other benefits, such as improved environmental performance and enhanced resilience to climate change.

The Federal Government can meaningfully expand opportunities for public-private collaboration, encourage more transformational projects, and improve project outcomes by encouraging Federal investment in robust predevelopment activities and providing other forms of support, such as technical assistance, to communities during the predevelopment phase.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Policy. It shall be the policy of the Federal Government for all executive departments and agencies (agencies) that provide grants, technical assistance, and other forms of support for nonfederal domestic infrastructure assets, or regulate the development of these infrastructure assets, to actively support nonfederal predevelopment activities with all available tools, including grants, technical assistance, and regulatory changes, to the extent permitted by law and consistent with agency mission. Agencies shall seek to make predevelopment funding and support available, as permitted by law and consistent with agency mission and where it is in the public interest and does not supplant existing public investment, to encourage opportunities for private sector investment. Agencies shall pay particular attention to predevelopment activities in sectors where State, local, and tribal governments have traditionally played a significant role, such as surface transportation, drinking water, sewage and storm water management systems, landside ports, and social infrastructure like schools and community facilities.

Sec. 2. Definitions. For the purposes of this memorandum:

(a) "Predevelopment activities" means activities that provide decisionmakers with the opportunity to identify and

assess potential infrastructure projects and modifications to existing infrastructure projects, and to advance those projects from the conceptual phase to actual construction.

Predevelopment activities include:

- (i) project planning, feasibility studies, economic assessments and cost-benefit analyses, and public benefit studies and value-for-money analyses;
- (ii) design and engineering;
- (iii) financial planning (including the identification of funding and financing options);
- (iv) permitting, environmental review, and regulatory processes;
- (v) assessment of the impacts of potential projects on the area, including the effect on communities, the environment, the workforce, and wages and benefits, as well as assessment of infrastructure vulnerability and resilience to climate change and other risks; and
- (vi) public outreach and community engagement.

(b) "Predevelopment funding" means funding for predevelopment activities and associated costs, such as flexible staff, external advisors, convening potential investment partners, and associated legal costs directly related to predevelopment activities.

Sec. 3. Federal Action to Support Predevelopment Activities. Agencies shall take the following actions to support predevelopment activities:

(a) the Department of Commerce, through the Economic Development Administration's Public Works grants and Economic Adjustment Assistance grants, and consistent with the programs' mission and goals, shall take steps to increase assistance for the predevelopment phase of infrastructure projects;

(b) the Department of Transportation shall develop guidance to clarify where predevelopment activities are eligible for funding through its programs. To further encourage early collaboration in the project development process, the Department of Transportation shall also clarify options for providing early feedback into environmental review processes;

(c) the Department of Homeland Security shall clarify for grantees where predevelopment funding is available through the Hazard Mitigation Grant Program;

(d) the Department of Housing and Urban Development shall clarify for grantees how the Community Development Block Grant program and other Federal funding sources can be used for predevelopment activities;

(e) the Department of Agriculture shall develop guidance to clarify where predevelopment activities are eligible for funding through its programs, including grants for water and waste projects pursuant to 7 C.F.R. 1780.1 *et seq.*, the Special Evaluation Assistance for Rural Communities and Households Program, the Community Facilities Grant program, and the Watershed and Flood Prevention Operations Program. To encourage innovative predevelopment work, the Department of Agriculture shall also train Water and Environmental Programs field staff on predevelopment best practices and prioritize predevelopment in the Department of Agriculture's project development process; and

(f) the other members of the Working Group established in section 3 of my memorandum of July 17, 2014 (Expanding Public-Private Collaboration on Infrastructure Development and Financing), shall take such steps as appropriate to clarify program eligibilities related to predevelopment activities for nonfederal domestic infrastructure assets.

Sec. 4. Implementation, Public Education, and Best Practices. The Departments of Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, Energy, and Homeland Security, and the Environmental Protection Agency shall develop plans for implementing the requirements of this memorandum, providing technical assistance to nonfederal actors engaged in predevelopment activities, and educating grantees and the public on the benefits of predevelopment and the Federal resources available for these activities. These agencies shall also work together to develop a guide for nonfederal actors undertaking nonfederal predevelopment activities that includes best practices on how to evaluate and compare traditional and alternative financing strategies. No later than 60 days after the date of this memorandum, these agencies shall provide these plans and the best practice guide to the Director of the National Economic Council. Subsequently, these agencies shall provide regular updates to the Director of the National Economic Council on their progress in increasing support for predevelopment activities.

Sec. 5. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the *Federal Register*.

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